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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2011-450

KATHERINE M. CARNEY
1934 Academy Court
Claremont, CA 91711

A C C U S A T I O N

Vocational Nurse License No. VN 164005

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On or about July 16, 1993, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License No. VN 164005 to Katherine M. Carney (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides, in pertinent part, that the suspension, expiration, surrender, and cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a

1 record pertaining to an arrest.

2 "This section shall not be construed to apply to any drug diversion program operated by any
3 agency established under Division 2 (commencing with Section 500) of this code, or any
4 initiative act referred to in that division."

5 7. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a
6 vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of
7 the Vocational Nursing Practice Act.

8 8. Section 2878 states, in pertinent part:

9 "The Board may suspend or revoke a license issued under this chapter [the Vocational
10 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

11 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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13 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
14 violating of, or conspiring to violate any provision or term of this chapter.

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16 "(f) Conviction of a crime substantially related to the qualifications, functions, and duties
17 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
18 evidence of the conviction."

19 9. Section 2878.5 states, in pertinent part:

20 "In addition to other acts constituting unprofessional conduct within the meaning of this
21 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed
22 under this chapter to do any of the following:

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24 "(b) Use any controlled substance as defined in Division 10 of the Health and Safety
25 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
26 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
27 extent that the use impairs his or her ability to conduct with safety to the public the practice
28 authorized by his or her license.

1 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
2 drug, or the prescription, consumption, or self-administration of any of the substances described
3 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
4 conclusive evidence thereof."

5 **REGULATORY PROVISIONS**

6 10. California Code of Regulations, title 16, Section 2521, states:

7 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
8 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
9 considered to be substantially related to the qualifications, functions or duties of a licensed
10 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
11 vocational nurse to perform the functions authorized by his license in a manner consistent with
12 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those
13 involving the following:

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15 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the
17 Business and Professions Code."

18 **COST RECOVERY**

19 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
20 law judge to direct a licensee found to have committed a violation or violations of the licensing
21 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of this
22 case.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Convictions of Substantially-Related Crimes)**

25 12. Respondent is subject to disciplinary action under Sections 490 and 2878, subdivision
26 (f), in conjunction with California Code of Regulations, title 16, section 2521, on the grounds of
27 unprofessional conduct, in that Respondent was convicted of crimes that are substantially related
28 to the qualifications, functions, and duties of a vocational nurse as follows:

1 a. On or about August 25, 2011, after pleading *nolo contendere*, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 23153, subdivision (b)
3 [driving while having 0.08% or more, by weight, of alcohol in the blood], in the criminal
4 proceeding entitled *The People of the State of California v. Kathy Carney* (Super. Ct. Los
5 Angeles County, 2011, No. 1JB05209). The court placed Respondent on probation for a period
6 of three years, ordered her to enroll and successfully complete a six-month licensed first-offender
7 alcohol and other drug education and counseling program, and ordered her to pay a fine. The
8 circumstances surrounding the conviction are that on or about May 2, 2011, a Glendora Police
9 Department Officer was dispatched to investigate a traffic collision in the city of Glendora,
10 California. The officer arrived at the scene and made contact with Respondent, who was still
11 seated in her vehicle. The officer smelled a strong odor of alcohol emitting from Respondent's
12 vehicle. Respondent was also slurring her words. The officer observed an open bottle of alcohol
13 [Captain Morgan rum] in a brown bag on the front passenger seat of Respondent's vehicle. The
14 Respondent admitted to the officer that she had consumed the bottle of "Captain Morgan" rum.
15 The Respondent agreed to a series of field sobriety tests which she failed to complete
16 satisfactorily. Respondent was subsequently given two blood tests by the Alco Sensor IV exam,
17 with results of 0.185% blood alcohol content (BAC) and 0.180% BAC, by weight.

18 b. On or about August 02, 2011, after pleading *nolo contendere*, Respondent was
19 convicted of one misdemeanor count of violating Vehicle Code section 23153, subdivision (b)
20 [driving while having 0.08% or more, by weight, of alcohol in the blood], in the criminal
21 proceeding entitled *The People of the State of California v. Katherine Mae Carney* (Super. Ct.
22 Los Angeles County, 2011, No. 1PK03187). The court placed Respondent on probation for a
23 period of three years, ordered her to enroll and successfully complete a one-year alcohol program,
24 and ordered her to pay a fine. The circumstances surrounding the conviction are that on or about
25 April 15, 2011, a Pomona Police Department Officer was dispatched to investigate a traffic
26 collision in the city of Pomona, California. The officer arrived at the scene and found
27 Respondent slumped over the wheel and unresponsive. The officer smelled a strong odor of
28 alcohol emitting from Respondent's person. The Respondent became unresponsive and was

1 transported to Pomona Valley Hospital for treatment. The officer was unable to perform any field
2 sobriety test on Respondent, due to the extreme level of her intoxication. Prior to the officers'
3 arrival at the scene, a witness had observed Respondent hit a parked vehicle in a building parking
4 lot. The witness and the owner of the vehicle that was hit went down to the parking lot and
5 chased after the Respondent as she was leaving the scene. A witness attempted to block the exit
6 between two buildings with his vehicle, and Respondent struck the witness' vehicle with the front
7 bumper of her vehicle, while she was repeatedly trying to go around his vehicle. They blocked
8 the Respondent's vehicle from leaving the scene, and Respondent lightly struck a witness' right
9 leg with the bumper of her vehicle. The witness then ran over and turned Respondent's vehicle
10 off from the inside. The Respondent was observed by the witnesses taking several drinks out of
11 the bottle of alcohol in her vehicle while they were waiting for the police officer(s) to arrive. A
12 police officer from the Pomona Police Department then arrived at the scene, and observed
13 Respondent in her vehicle, with a 750 ml bottle of Captain Morgan Spiced Rum inside her
14 vehicle, which had been half consumed. The officer overheard Respondent tell paramedics at the
15 scene, in response to their question about what was wrong with her, that she had drank rum.
16 Respondent was transported to Pomona Valley Community Hospital (the hospital). She admitted
17 to the officer that she had consumed alcohol. When asked by the officer at the hospital how long
18 it had taken her to consume half of the bottle of the Rum, Respondent replied that she "drank it
19 really fast, not very long." She also told the officer that she was in the city of Pomona,
20 California, looking for drugs. The officer overheard a doctor who was questioning her about her
21 mental and physical state that she was drinking to attempt suicide because she was not satisfied
22 with living. Respondent was subsequently given a blood test at the hospital with a result of
23 greater than 0.08% BAC by weight (i.e. .27% BAC).

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Convictions Involving Alcohol)**

26 13. Respondent is subject to disciplinary action under Sections 2878, subdivision (a), and
27 2878.5, subdivision (c), in conjunction with California Code of Regulations, title 16, Section
28 2521, subdivision (f), on the grounds of unprofessional conduct, in that Respondent was

1 convicted of crimes involving alcohol. Complainant refers to, and by this reference incorporates,
2 the allegations set forth above in Paragraph 12, subparagraphs (a) and (b), inclusive, as though set
3 forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Dangerous Use of Alcohol)**

6 14. Respondent is subject to disciplinary action under sections 2878, subdivision (a) and
7 2878.5, subdivision (b), on the grounds of unprofessional conduct, in that Respondent used
8 alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any other
9 person, or the public. Complainant refers to, and by this reference incorporates, the allegations
10 set forth above in Paragraph 12, subparagraphs (a) and (b), inclusive, as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct / Violate Act)**

13 15. Respondent is subject to disciplinary action under Sections 2875, 2878, subdivision
14 (d), and 2878.5, on the grounds of unprofessional conduct, in that Respondent was convicted of
15 crimes and committed acts involving unprofessional conduct, violating the Vocational Nursing
16 Practice Act. Complainant refers to, and by this reference incorporates, the allegations set forth
17 above in Paragraphs 12 through 14, inclusive, as though set forth fully.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board issue a decision:

21 1. Revoking or suspending Vocational Nurse License No. VN 164005, issued to
22 Katherine M. Carney;

23 2. Ordering Katherine M. Carney to pay the Board the reasonable costs of the
24 investigation and enforcement of this case, pursuant to section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

APR 09 2013

DATED: _____



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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